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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/659,112	09/11/2000	Arthur Cameron Wilson	9D-RG-19254	4522
7590	01/25/2005		EXAMINER	
John S. Beulick Armstrong Teasdale LLP Suite 2600 One Metropolitan Square St. Louise, MO 63102			COCKS, JOSIAH C	
			ART UNIT	PAPER NUMBER
			3749	
DATE MAILED: 01/25/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/659,112	Applicant(s)	WILSON, ARTHUR CAMERON
Examiner	Josiah Cocks	Art Unit	3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on RCE filed 12/16/2004.  
2a) This action is **FINAL**.                            2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1, 3-12, and 14-19 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) \_\_\_\_\_ is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's RCE submission and amendment filed on 12/16/2004 have been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,103,799 to Atanasio ("Atanasio") in view of U.S. Patent No. 4,848,217 to Koziol ("Koziol").

Atanasio discloses in Figures 1-4 a rack similar to that described in applicant's claims 1 and 3-8 including a frame (10) with a flat first portion (the portions of the rack bounded by side member 14, note Fig. 3) and a second portion that is considered by the examiner to extend

obliquely to the first portion (see Fig. 3 and note that end member 18 is not numbered in the figure but is illustrated as extending obliquely upward on the right side of member 14). Atanasio further discloses a support system including at two first legs (40) and two second legs (42) rearwardly displaced from the first legs wherein are both attached to the first portion (see Figs. 2 and 3). Atanasio also discloses that the first portion has a front edge (see Fig. 2 and end member 18 on portion of frame 10 near frame 12) and a planar surface (see Fig. 3), and portions (28) with connecting portion (18a) extending obliquely upward. The examiner considers that the portions (28) would each function as handle (i.e. thus forming two handles), which extend from the first portion and are adjacent the front edge (see Fig. 2).

In regard to the recitation the first and second legs are “non-rotatably” attached to the first portion, the examiner does not consider this recitation to read over the prior art of record. The examiner acknowledges that the legs (40 and 42) of Atanasio are configured to pivot to a storage position (as shown in Fig. 4 of Atanasio). This storage position allows for the rack frame to be conveniently arranged for storage in a suitable receptacle (see col. 4, lines 11-13). However, applicant’s invention is unconcerned with providing an oven rack that has legs configured to fold to provide this improved storage capability. It has been held that the omission of an element and its function is obvious if the function of the element is not desired. See MPEP § 2144.04 (II)(A). The examiner considers a person of ordinary skill in the art would reasonably recognize that the legs (40 and 42) of Atanasio would not be configured to pivot if the ability to conveniently store the rack is not desired. Further, this person of ordinary skill would understand that the legs would then be rigidly attached to the cooking rack in manner such as that shown in Koziol, in which legs (18 and 19) are non-rotatably attached to the cooking rack.

Therefore, the recitation of legs “non-rotatably attached” is not considered to patentably distinguish over the prior art of record.

Atanasio also discloses that the first portion includes a plurality of first rods (18) and second rods (14 and 16) attached substantially perpendicularly to the first rods wherein the first and second rods are substantially co-planar on the first portion of the rack (see Figs. 2 and 3)

In regard to claim 8 and the recitation that the rack is “configured to be used as a trivet on a countertop,” is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of Atanasio would function as a trivet.

In regard to the recitation that the rack is an oven rack, while the rack of Atanasio is disclosed as being used as a charcoal grill, a person of ordinary skill in the art would understand that this rack could also be used in an oven and may be considered an oven rack. Koziol is cited to support this assertion. Koziol discloses a cooking rack in the same field of endeavor as the rack of Atanasio. In Koziol, it is noted that such a rack may be employed in any type of cooking device such as an oven or a charcoal grill (see Abstract of Koziol).

4. Claims 9-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atanasio in view of Koziol as applied to the claims above and further in view of U.S. Patent No. 3,266,484 to Carpenter et al. (“Carpenter”).

Atanasio in view of Koziol teach all the limitations of claims 9-12 and 14-19 except possibly for oven with a cooking chamber comprising a bottom surface and at least three sides.

However, Koziol is cited to show that it is well known that cooking racks, such as that of Atanasio, are intended to be used in an oven (see Abstract of Koziol) and would be placed on the bottom surface thereof. The examiner considers that an oven, such as that noted in Koziol, would inherently have a cooking chamber with a bottom surface, at least three sides, and a hinged door, as this is conventional structure of an oven. Carpenter is cited to simply to show such conventional oven structure including a bottom surface, at least three sides, and a door hingedly attached to the combustion chamber (see Fig. 1). Placing the rack of Atanasio in a conventional oven, such as that of Carpenter, would result in an oven rack that is configured to be stabilized against the oven door and fit within the combustion chamber. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that the cooking rack of Atanasio would be placed on the bottom surface of an oven, such as that disclosed in Carpenter, for the purpose of supporting items to be cooked in the oven.

In regard to claim 19 and the recitation that the rack is "configured to be used as a trivet on a countertop," is simply a statement of intended use and given no patentable weight. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). In this case, the rack of Atanasio would function as a trivet.

***Response to Arguments***

5. Applicant's arguments filed 12/16/2005 have been fully considered but they are not persuasive. Applicant has amended the claims to recite that the legs are "non-rotatably" attached to the first portion. As noted above, the examiner does not consider this limitation to patentably distinguish over the legs disclosed by Atanasio.

Applicant also argues that the upturned ends (28) of Atanasio are not properly interpreted as handles. However, the term "handle" does not connote any particular structure. The examiner notes that these upturned ends provide raised portions that would be capable of being grasped by a user. As recited in applicant's response handle is defined as "that part of a utensil...which is to be held, turned, lifted, pulled, etc. with the hand." The examiner considers that as these upturned ends (28) would allow for a user to perform an action such as holding, turning, pulling etc. on the rack of Atanasio, these ends may be reasonably interpreted as handles.

Accordingly, the examiner considers that applicant's claims do not distinguish over the prior art of record.

***Conclusion***

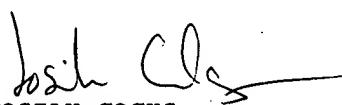
6. This action is made non-final. A THREE (3) MONTH shortened statutory period for reply has been set. Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus, can be reached at (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc  
January 21, 2005

  
JOSIAH COCKS  
PRIMARY EXAMINER  
ART UNIT 3749